HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.460/2001

APPELLANT	Bhikhuram Sahu @ Bhikhu, aged about 50 years, s/o Paltan Sahu, R/o Village-Rawanbhatha, Jamul, P.S.Jamul, District-Durg(CG)
	Versus
RESPONDENT	State of Chhattisgarh, through Police P.S.Jamul, District-Durg(CG)

Appearance:

Shri Saurabh Kumar Pandey, counsel for the appellant.

Shri M.P.S.Bhatia, Panel Lawyer for the State.

ORAL JUDGMENT
(19.07.2007)

SUNIL KUMAR SINHA, J.

Heard.

Challenge is made to the judgment of conviction and order of sentence dated 8th May, 2001, passed by the Sessions Judge, Durg in S.T.No.92/1998, whereby, the appellant was convicted under Section 498-A of IPC and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.

The appellant (father-in-law), his son namely-Ganesh (husband) and his wife-Phool Bai (mother-in-law) were charged for an offence punishable under Sections 306 and 498-A of IPC. Ganesh and Phool Bai were acquitted of both the charges by the trial Court and this appellant was also acquitted of the charge framed under Section 306 of IPC.

The brief facts are that the deceased namely-Sunita was married to the co-accused – Ganesh 4 years prior to the date of incident, which took place on 7.8.1997 when she committed suicide by hanging herself while residing in the house of her husband and in-laws. A merg intimation to this effect was lodged by the appellant in Police Sation-Jamul, which was recorded under Ex.P/10. Witnesses were called under Ex.P/8

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and inquest on the body of the deceased was prepared and thereafter, the body was sent for postmortem under Ex.P/6. The postmortem report Ex.P/7 was received and after due investigation, an offence under Section 306 of IPC was registered against this appellant only through the FIR Ex.P/11 and the charge sheet was filed against this appellant alone.

On trial, when the evidence came against the other co-accused persons, they were also added as accused under Section 319 Cr.P.C. and the trial was concluded. On conclusion of trial, the other 2 co-accused persons were acquitted; however, the appellant was convicted as aforementioned.

The conviction and sentence awarded to the appellant is based upon the testimony of Chiman (PW-1 father of the deceased), Rukmani (PW-2 younger sister of the deceased) and Rahi (PW-3 another sister of the deceased).

Learned counsel for the appellant argues that the conviction based upon testimony of these witnesses is not in accordance with law and the appellant should be acquitted. In the alternative, he also argues that the appellant is an old man, now aged about 60 years, therefore, the quantum of sentence awarded to him be reduced, and since he is in jail on account of default of appearance and he has already undergone for a period of more than 13 months, it should be preferably reduced to the sentence already undergone by him.

On the other hand, learned counsel for the State supports the judgment of conviction and order of sentence passed by the trial Court.

I have heard learned counsel for the parties at length and have also perused the record of the Sessions trial.

Chiman (PW-1) has deposed that after the marriage, the deceased was being treated with cruelty by this appellant and his son on the pretext of demand of fan etc. The appellant used to pass comments regarding *marpeet* to the deceased. He has deposed vide para 2 that when he had gone to meet the

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deceased, just 8 days prior to the date of incident, the deceased wanted to go with him and she has stated that the father-in-law and husband said to her that they will kill her. On this, he had a talk with them, but just after 8 days of the said talk, the girl committed suicide.

Rukmani (PW-2) has also deposed vide para 1 that whenever, she met with Sunita after the marriage, she used to tell her that she was being treated with cruelty by her father-in-law, mother-in-law and husband. They were always making taunts against her, saying that she had come from a poor family.

Almost similar evidence has been given by Rahi (PW-3), who has deposed that Sunita was being treated with cruelty by her father-in-law and husband on the pretext of demand of dowry.

Though these witnesses have been put to a lengthy cross-examination by the defence, but nothing very important,so far as the present appellant-Bhikhuram is concerned, has come in their evidence and their evidence appear to be trustworthy and reliable.

The judgment of Sessions Court would show that on the basis of various omissions in the evidence of these witnesses pertaining to co-accused – Ganesh and Phool Bai, the said Court has not believed on their testimony against those accused persons and giving benefit of the omissions made by them, regarding the allegations of treating the deceased with cruelty on account of demand of dowry, they were acquitted by the trial Court, but so far as this appellant is concerned, the trial Court has rightly relied upon their testimony and has rightly recorded the finding of conviction against him.

There is no force in the arguments advanced by learned counsel for the appellant that the finding recorded by the trial Court regarding commission of offence under Section 498-A IPC against this appellant is not in accordance with law and the same cannot be accepted.

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Now the next question comes regarding the sentence.

Admittedly, the appellant is aged about 60 years, as on today. Previously he was on bail, but since he committed a default of appearance, he was taken into custody on 6.7.2006 and from the said date, he is in jail and as stated by learned counsel for the appellant, he has already undergone for a period more than 13 months.

Learned counsel for the appellant submits that in the facts and circumstances of the case, particularly looking to the age of the appellant, the sentence already undergone by him would be the proper sentence for him and he be awarded the same.

The principle of proportion between crime and punishment is governed by the "*Doctrine of just desert*". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "*just desert*" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same, though all further subject to the statutory obligations specifically provided by law in force.

In the present case, looking to the facts and circumstances, where the husband and the mother-in-law have already been acquitted on the same set of evidence and the father-in-law, who is aged about 60 years, was convicted for an offence punishable under Section 498-A of IPC, I deem it proper

that the jail sentence of 1 ½ years along with a fine of Rs.1000/- would be sufficient to meet the ends of justice.

Accordingly, the appeal is partly allowed.

The conviction of the appellant awarded under Section 498-A is hereby confirmed. However, the sentence awarded to him is set aside. Instead of the sentence awarded by the Sessions Court, he is sentenced to undergo R.I. for 1 ½ years and to pay a fine of Rs.1000/-, in default of payment of fine he shall further undergo R.I. for 6 months.

Ordered accordingly.

Sd/-
Sunil Kumar Sinha
Judge

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